

SEP 4 - 1998

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Federal Communications Commission  
Office of Secretary

CC98-167

In the Matter of: )  
GTE System Telephone Companies ) Transmittal No. 260  
GTSC Tariff FCC No. 1, )  
 )  
Transmittal No. 260, )  
GTE ADSL Service )

**PETITION OF AMERICA ONLINE, INC. TO SUSPEND AND INVESTIGATE  
THE GTE SYSTEM TELEPHONE COMPANIES'  
GTE DSL SOLUTIONS-ADSL SERVICE TARIFF**

America Online, Inc. ("AOL"), by its attorneys, and pursuant to the Public Notice released by the Federal Communications Commission ("FCC" or "Commission") on August 31, 1998,<sup>1/</sup> and the Commission's rules,<sup>2/</sup> hereby files this Petition to Suspend and Investigate the tariff filing of the GTE System Telephone Companies ("GSTC") for its proposed "DSL Solutions-ADSL Service," under the above-captioned transmittal (the "GSTC Tariff").

**DISCUSSION**

This new tariff filing duplicates, with very minor changes, an earlier tariff filing offering DSL Solutions-ADSL Service by GSTC's affiliates, the GTE Telephone Operating Companies (the "GTOC Tariff"),<sup>3/</sup> filed May 15, 1998, and extends the offering to new areas. On May 22, 1998, AOL filed a Petition to Suspend and Investigate the earlier GTOC Tariff (the "Petition"), a

<sup>1/</sup> Public Reference Log, 1998-08-31, page 2 of 6, (rel. August 31, 1998).

<sup>2/</sup> 47 C.F.R. § 1.773 (1998).

<sup>3/</sup> GTOC Tariff FCC No. 1, Transmittal No. 1148 (filed May 15, 1998) ("ADSL Tariff").

copy of which is attached as Appendix A.<sup>4/</sup> The Commission subsequently suspended the GTOC Tariff filing for one day and instituted an investigation of the tariff,<sup>5/</sup> and released an order designating issues for investigation.<sup>6/</sup> For the reasons set forth in the original AOL Petition, which apply equally to the instant GSTC Tariff and are incorporated herein by reference, AOL believes that the public interest will be best served by suspension of the effective date of the GSTC tariff so that the FCC may fully and thoroughly investigate the serious issues raised by this most recent filing.

As set forth in its original Petition, AOL strives to ensure that its members receive service in the most efficient, reliable, and economical manner possible, without regard to the underlying technology used. AOL is encouraged by the potential of Digital Subscriber Line services to enhance and improve the increasing flow of data traffic and believes they hold great promise as the FCC seeks to foster the development and deployment of high-speed, broadband services for residential and business consumers.

As AOL's Petition notes, however, the lawfulness of the rates, terms and conditions under which this nascent service will be made publicly available are of first impression. Indeed, the proposed GTE Tariff presents the FCC with the critical threshold jurisdictional issue as to whether the service that GTE proposes to deploy is in fact an "interstate data access service" as GTE urges or whether the service is rather an intrastate service as other carriers that have

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<sup>4/</sup> Petition of America Online, Inc. to Suspend and Investigate the GTE Telephone Operating Companies' GTE DSL Solutions-ADSL Service Tariff, Transmittal No. 1148 (filed May 22, 1998).

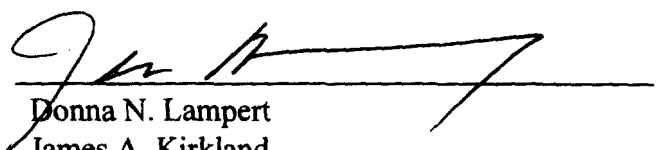
<sup>5/</sup> GTE Telephone Operations GTOC Tariff No. 1 GTOC Transmittal No. 1148, CC Docket No. 98-79, Order, DA 98-1020 (released May 29, 1998).

<sup>6/</sup> GTE Telephone Operators [sic] GTOC Tariff No. 1 GTOC Transmittal No. 1148, CC Docket No. 98-79, Order Designating Issues for Investigation, DA 98-1167 (released August 20, 1998).

proposed or offered DSL have previously understood. If the public interest in a robustly competitive market for high-speed, data-friendly services is to be served, AOL urges the Commission to addresses this and other potential issues raised in AOL's Petition carefully and thoroughly. Accordingly, AOL requests that the FCC suspend the effective date of the tariff and conduct an investigation of the proposed ADSL service offering.

Respectfully submitted,

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Dated: September 4, 1998

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## **APPENDIX A**

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MAY 22 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of:	)	
GTE Telephone Operating Companies	)	Transmittal No. 1148
GTOC Tariff FCC No. 1,	)	
	)	
Transmittal No. 1148,	)	
GTE ADSL Service	)	

**PETITION OF AMERICA ONLINE, INC. TO SUSPEND AND INVESTIGATE  
THE GTE TELEPHONE OPERATING COMPANIES'  
GTE DSL SOLUTIONS-ADSL SERVICE TARIFF**

America Online, Inc. ("AOL"), by its attorneys, and pursuant to the Public Notice released by the Federal Communications Commission ("FCC" or "Commission") on May 19, 1998,<sup>1/</sup> and the Commission's rules,<sup>2/</sup> hereby files this Petition to Suspend and Investigate the tariff filing of the GTE Telephone Operating Companies ("GTE Tariff") for its proposed GTE DSL Solutions-ADSL Service, under the above-captioned transmittal.<sup>3/</sup> For the reasons set forth below, AOL believes that the public interest will be best served by suspension of the effective date of the tariff so that the FCC may fully and thoroughly investigate the issues raised by the draft GTE Tariff.

**INTRODUCTION**

As the world's leading provider of Internet online services, AOL strives to ensure that its members receive service in the most efficient, reliable, and economical manner possible, without

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<sup>1/</sup> Public Reference Log, 1998-05-18, page 2 of 9, (rel. May 19, 1998).

<sup>2/</sup> 47 C.F.R. § 1.773 (1998).

<sup>3/</sup> GTOC Tariff FCC No. 1, Transmittal No. 1148 (filed May 15, 1998) ("ADSL Tariff").

regard to the underlying technology used.<sup>4'</sup> As such, AOL believes that the prospect of faster, more efficient service delivery to its members will help fulfill the vast potential of the Internet and online medium.<sup>5'</sup> While AOL is technology neutral, it understands that its consumers are dependent upon the wide-spread deployment of competitively available technologies to foster enhanced access to Internet online services, whether deployed by traditional wireline local exchange carriers ("LECs"), wireless providers, cable companies or other service providers. As Digital Subscriber Line ("DSL") services emerge, AOL is encouraged by their potential to enhance and improve the increasing flow of data traffic and believes they hold great promise as the FCC seeks to foster the development and deployment of high-speed, broadband services for residential and business consumers.<sup>6'</sup>

Although AOL is well aware of other actual and proposed deployments of DSL services on an intrastate basis,<sup>7'</sup> it recognizes that the FCC has never before been asked to pass judgment upon the rates, terms and conditions under which this nascent service will be made publicly available. Indeed, the proposed GTE Tariff presents the FCC with the critical threshold

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<sup>4'</sup> Today, AOL's Internet online service has over 12 million members with local dial-up access in over 700 cities to provide original programming and informative content, E-mail capabilities, access to the World Wide Web and informational databases, electronic magazines and newspapers, and opportunities to participate in online "chat" conferences. The vast majority of AOL's members are residential consumers who use the service for personal education, information, recreation and entertainment.

<sup>5'</sup> See 47 U.S.C. § 230(a).

<sup>6'</sup> AOL has itself embarked upon several DSL trials as it seeks to enhance the accessibility of Internet and online services for its subscribers. See <[http://www.adsl.com/adsl\\_forum.html](http://www.adsl.com/adsl_forum.html)> (beginning in April, 1998, AOL commenced ADSL trials in Birmingham, AL; Phoenix, AZ; the Greater Bay Area, CA; N. Virginia Suburbs of Washington, D.C.; and Redmond, WA).

<sup>7'</sup> See, e.g., US West Proposed Revisions to its Competitive Advanced Communications Services Tariff, Docket No. T-01051B-98-0098 (tariff filed February 17, 1998) (Colorado); In the Matter of US West's Proposed Tariff Revision to its Advanced Services Tariff, Docket No. 98-119-TC (tariff filed January 26, 1998) (New Mexico); US West Advanced Communication Services Oregon Tariff, Transmittal No. 98-009-PL (filed March 20, 1998). AOL takes no position regarding the reasonableness or lawfulness of the state-filed US WEST's DSL tariffs and transmittals.

jurisdictional issue as to whether the service that GTE proposes to deploy is in fact an "interstate data access service" as GTE urges or whether the service is rather an intrastate service as other carriers that have proposed or offered DSL have previously understood.<sup>8/</sup>

If the public interest in a robustly competitive market for high-speed, data-friendly services is to be served, AOL urges the Commission to address this and other potential issues carefully and thoroughly. Accordingly, AOL requests that the FCC suspend the effective date of the tariff and conduct an investigation of the proposed ADSL service offering.

### **ISSUES FOR INVESTIGATION**

GTE's proposed tariff presents the Commission with the basic question as to whether the service that GTE proposes to provide is indeed an "interstate service" properly tariffed at the federal level. While the GTE Tariff characterizes the service as "an interstate data access service" that provides service between an end user subscriber and an Internet Service Provider ("ISP"),<sup>9/</sup> certainly such characterization cannot be deemed to be dispositive. In fact, long standing FCC precedent has been directly to the contrary.

In its Access Charge Reform proceeding, the FCC clearly found that ISPs use the network in an analogous manner to other local customers, whether banks, radio stations, or pizza parlors.<sup>10/</sup> As users of local (intrastate) service, ISPs thus expressly do not purchase interstate access services but rather are treated in the same fashion as other local service users. Indeed, it is for this reason that other carriers that have offered DSL services to date have understood the need

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<sup>8/</sup> Id.

<sup>9/</sup> ADSL Tariff, Description and Justification at 1.

<sup>10/</sup> Access Charge Reform, First Report and Order, 12 FCC Rcd 15982, at ¶ 345 (1997) ("Access Charge Reform Order").

to comply with relevant state regulatory provisions regarding their proposed services, including the filing of intrastate tariffs to the extent relevant state law requires them to do so.<sup>11/</sup>

Similarly, every state commission that has examined the issue of whether ISP traffic should be treated as interstate for purposes of reciprocal compensation obligations has ruled that calls to the local telephone numbers of ISPs are local in nature and should be subject to reciprocal compensation.<sup>12/</sup> Building on the FCC's determinations in its Access Charge Reform proceeding that ISPs are end users that use the network in a manner analogous to other local end user customers, these states have determined ISP traffic to be local in nature. Today, ISPs purchase the same local services under tariff as other business end users; accordingly, it would be unlawful discrimination to single out ISPs for different treatment.

Significantly, as filed, the GTE tariff does not provide any reason for the FCC to conclude that the proposed ADSL service is in fact interstate other than GTE's assertions that it is so. Certainly the schematic diagram of the "ADSL Service Layout" attached to the tariff gives no indication of geographic or jurisdictional boundaries (whether LATAs or state borders) and there is no indication anywhere in the tariff of the alleged interstate nature of the offering. Moreover, while GTE asserts in the Description and Justification that "the record in a number of

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<sup>11/</sup> See supra.

<sup>12/</sup> The following states have issued rulings or arbitration awards recognizing that ISP traffic should not be treated as interstate traffic for reciprocal compensation purposes: Arizona, Colorado, Connecticut, Delaware, Maryland, Michigan, Minnesota, New York, Oregon, Texas, Virginia, West Virginia, Washington. Proceedings or appeals are currently pending in California, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Missouri, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Virginia, and Wisconsin. Several incumbent LECs have appealed the state commission rulings, including in Illinois, Michigan and Texas. See Ameritech Illinois v. WorldCom Technologies, et al., Case No. 98-C-1925 (N.D. Ill.); Michigan Bell Telephone Co. v. MFS Intelenet of Michigan, et al., Case No. 98-CV-18 (W.D. Mich.); Southwestern Bell Tel. v. Public Utility Comm., et al., Case No. 98-CV-43 (W.D. Tex.).



Commission proceedings supports this conclusion,"<sup>13/</sup> it cites to nothing more than its own filings asserting the so-called "interstate" nature of the service. Likewise, GTE's characterization of the offering as an "access" service because "GTE will be providing access to the necessary network functions and equipment" to allow ISPs and others to offer service to their subscribers is circular and thus does not shed additional light on the issue.

AOL recognizes the tremendous importance of this fundamental jurisdictional determination and for this reason, urges the FCC to suspend the effective date of the GTE Tariff and conduct an investigation. In addition, AOL notes that there is a substantial concern that GTE's characterization of the proposed DSL service as "interstate" could significantly influence the outcome of other Commission proceedings, including the Reciprocal Compensation docket,<sup>14/</sup> and the Access Charge Reform docket.<sup>15/</sup> In this regard, AOL stresses that many carriers have repeatedly argued elsewhere that ISP traffic should be deemed interstate, which could require subjecting ISP traffic to the FCC's access charge regime and excluding such traffic from the reciprocal compensation obligations set forth in Section 251 of the 1996 Act.<sup>16/</sup>

Consequently, in addition to the need for the Commission to ensure that the service is properly classified for tariffing and regulatory purposes, the FCC should also examine this bedrock issue carefully to ensure that its processes cannot be not used to affect the results of related dockets. In this vein, AOL urges the FCC to clarify that even if this tariff is allowed to

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<sup>13/</sup> ADSL Tariff, Description and Justification at 2.

<sup>14/</sup> ALTS Request for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, Public Notice, CC Docket No. 97-30 (rel. July 2, 1997).

<sup>15/</sup> See Access Charge Reform Order, 12 FCC Rcd at ¶ 345.

<sup>16/</sup> See e.g., Comments of Ameritech to ALTS Reciprocal Compensation Petition, CCB/CPD 97-30 (filed June 17, 1997) at 7-11; Comments of US West to Access Charge Reform NPRM, CC Docket No. 96-262 (filed January 29, 1997) at 83-84.

become effective, it will in no way affect the jurisdictional and regulatory conclusions the FCC has reached in other proceedings, including the Commission's carefully reasoned decision to treat ISPs as end users and to treat ISP traffic in the same manner as other local traffic.

The GTE Tariff also raises additional issues as it is the first proposed DSL service of which AOL is aware that is designed primarily for ISP customers. Because the FCC has never before had the opportunity to pass judgment upon the rates, terms and conditions under which this nascent service may be made publicly available, the FCC should be especially mindful of the critical importance of its conclusions in this regard, as the outcome of its review will likely guide other carriers and interested parties as they examine, deploy, and utilize DSL and similar services to support the growing Internet and online medium. Such an investigation is especially important given that as a practical matter, interested parties have had less than three days to review the GTE tariff itself and even less time to examine the accompanying cost support material, which exceeds 900 pages in length.<sup>177</sup> Indeed, a more careful review of the filed material may reveal additional questions that must be resolved to ensure that the proposed service will be offered in the public interest.

Accordingly, AOL believes the public interest will be best served by a thorough FCC examination of the rates, terms and conditions of the proposed DSL service offering, including: whether the voluminous cost support data supports a finding that the proposed rates are cost-based, just and reasonable; whether the proposed configuration of the DSL service comports with the competitive policies and rules of the FCC and the 1996 Act; whether the nature of the

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<sup>177</sup> While GTE filed the tariff on May 15, 1998, the FCC did not release its Tariff Transmittal Public Reference Log until May 19, 1998. Further, the necessary cost support material was not available from the FCC or its independent copy contractor, ITS, until the afternoon of May 20, 1998, effectively limiting review time of that material to less than two days.

carrier/customer/subscriber relationship described in the GTE Tariff is sufficiently clear and reasonable; whether the terms and conditions under which GTE proposes to offer the service, including requirements that customers supply substantial information to GTE are just, reasonable and nondiscriminatory; whether the provisions regarding carrier liability for service omissions and quality problems are just and reasonable; and whether other aspects of the proposed DSL service offering are otherwise consistent with the public interest.

If the public interest in a robustly competitive market for high-speed, data-friendly services is to be served, the Commission must ensure that it addresses these issues carefully and thoroughly. For these reasons, AOL urges the FCC to suspend the effective date of the tariff and conduct a complete investigation of the rates, terms and conditions of Transmittal No. 1148.

### **CONCLUSION**

AOL stresses that it fully and enthusiastically supports the rapid, efficient deployment of DSL and other emerging broadband, data-friendly services that hold the potential to improve the delivery of Internet and online services and help bring the benefits of Internet and online services to the American people. Indeed, the public interest is best served by the development and deployment of services that will foster competition and will truly promote efficient services offered on a fair and open basis. Because the proposed GTE Tariff is of first impression and

raises substantial threshold jurisdictional issues, AOL respectfully requests that the FCC suspend the effective date of the proposed DSL offering and conduct an investigation of the issues delineated above.

Respectfully submitted,



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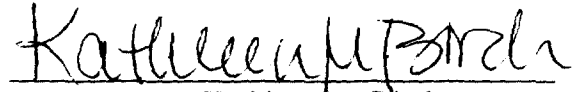
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Dated: May 22, 1998

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**CERTIFICATE OF SERVICE**

I, Kathleen M. Birch, hereby certify that on this 4th day of September, 1998, I caused a copy of the foregoing to be sent by messenger (\*) or by facsimile (\*\*), to the following:

  
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